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Filed May 6, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

E. A. MORRISON & SON

vs

THE UNITED STATES

Brief in opposition to the application for writ of certiorari.

If it is desirable in any instance to deny a motion such as that of the Solicitor General, it should certainly be denied in the present case (and that of Wolff, in which he also applies for the writ). And this Court has determined that it is sometimes proper, for a like application by the Attorney General was denied in the case of Merck & Co, as to duty on elaterium,—and we believe, in other cases.

This case involves no constitutional question, no question of general or far-reaching application, no conflict between decisions at different circuits, and no large amount of duties in dispute. The statement of the treasury officials as to the sum involved, reported

by the Solicitor General in his opening paragraphs, involves a grotesque distortion of the facts, and the Secretary has evidently been egregiously misinformed by some subordinate. Counsel for the appellants (below) have this entire contest in their hands, *and would gladly sign satisfaction in full upon every protest on the point for $5000.*

It is a mistake to state that the same or similar questions have arisen under cognate provisions of the Act of 1894. The best proof of this is that the rate of duty provided by the later act is precisely the same on all glass beads, loose or strung, as on imitations of precious stones, and the same as the rate contended for in the present cases. The issue dropped dead at once upon the taking effect of the Act of 1894.

The issue here involved is as to certain (and not all) strung glass beads. These, although not strung to advance them toward any manufacture, but simply for convenient carriage, were omitted from the bead paragraph in the law of 1890, which designated merely such beads as were loose, leaving all others to find their dutiable character elsewhere. The particular beads in suit were of a character imitating various precious stones, were composed of glass or paste, and were not over one inch in dimensions. Although strung, they were not set, but were intended to be set (Record, Morrison—p. 28, ff. 83–84—p. 39 f. 116)

Hence paragraph 454 of the law gave a precise description of them; a description from which many other strung beads would be in turn excluded,—such as were over an inch in dimensions, such as were not composed of glass or paste, and such as did not imitate precious stones.

In view of these circumstances it would have been strange indeed if the Circuit Court of Appeals had sustained the ruling of the lower tribunals that these articles should find their identification in the catch-all clause of the glass schedule, as "manufactures of

glass *not specially provided for in this act.*" And it may be mentioned that the decision of one of those tribunals,—the board of general appraisers,—was rendered without any evidence, and was a mere "fluke", and that the same board, without awaiting the decision of any court in these cases, sustained precisely similar protests in a number of other instances, on full evidence and consideration See S. 13347—S. 17504.

The fact that beads when strung were omitted from one provision of the law at a ten per cent duty, involved no repugnancy to their being admitted under another provision at the same rate, since that other amply and precisely covered them.

U. S. vs. Bennet, 26 U. S. Appeals, 535.

To the Solicitor General's suggestion that "the question is whether the known commercial designation determines the classification", the palpable answer is that if such designation be "beads," that term is not found in the law,—but only "loose beads", which these articles are not. The same difficulty exists as to the term "jewels." But if the designation be "imitations of precious stones" (which we think amply established on the proofs) then both designation and description support the ruling sought to be reviewed. If the commercial designation be one not used in the law, we must look to other means of identification, for no case ever yet held that a commercial name not found in the law can settle the question of duty.

The suggestion that these particular imitations of precious stones, as being used for trimmings, are excluded from paragraph 454 which provides only for articles used for setting in jewelry, involves two entirely baseless assumptions. The record shows clearly that both these and all other such imitations are used both for ornaments of a jewelry nature, and for general trimming purposes (see pp. 29, 34, 35, 43). And

that these imitations are intended for setting is equally well proven (see p. 28, ff. 83-84, p. 39, f. 116).

We think this is in every respect just such a decision as this Court should *not* consent to review; an ordinary routine decision on simple provisions of the law,—conflicting with nothing,—of very limited importance,—and palpably correct.

ALBERT COMSTOCK,
Counsel for Appellants.

COMSTOCK & BROWN,
Attorneys.